IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 17 of 2007

DATE OF DECISION: October 30, 2007

Commissioner of Central Excise, Jalandhar

…Appellant

Versus

M/s International Tractors Limited, Hoshiarpur

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Puneet Bassi, Advocate,
for the Appellant.

M.M. KUMAR, J.

The instant appeal filed under Section 35-G of the Central Excise Act, 1944 (for brevity, 'the Act') is directed against order dated 6.6.206 (P-2), passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), granting relief to the assessee-respondent that it was not required to pre-deposit duty and penalty. Recovery has also been stayed till the disposal of the appeal. The aforementioned view has been expressed in view of the order passed by the Tribunal in the case of **Tafe Limited v. C.C.E., Bangalore, 2002 (72) RL 435** and the Tribunal has opined that appeal itself might have to be allowed.

After hearing learned counsel and perusing the record, we are of the view that this is an avoidable litigation, which the appellant department has undertaken. Firstly, the Tribunal has the discretion of granting stay and dispensing with the requirement of

pre-deposit of duty. Secondly, the argument that under Section 35-C (2A) of the Act, the appeal is required to be heard within 180 days, would also be frivolous as the stay order is not co-terminus with the period prescribed for disposal of the appeal. The period of six months laid down therein is not even mandatory as has been held by Hon'ble the Supreme Court in the case of **Commissioner of Customs and Central Excise v. Kumar Cotton Mills (P) Ltd., (2005) 13 SCC 296**. Therefore, the department should have been careful in filing such frivolous appeals, which involved unnecessary expenditure and time that could have been devoted on better activities. We say no more on this score. The appeal is accordingly dismissed.

A copy of the order be sent to the Chief Commissioner, Central Excise, New Delhi, so as to enable him to take some remedial steps to curb such frivolous litigation.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 30, 2007
paramjit/Pkapoor